

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-1425

**United States Court of Appeals**

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

ARON SCHATTEN,

Appellant

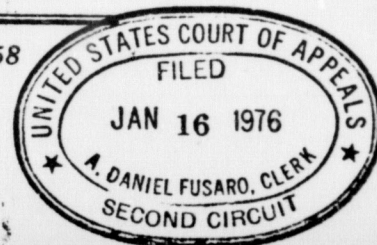
*On Appeal from the United States District Court  
for the Southern District of New York*

**Appellant's Appendix**

ALFRED I. ROSNER  
Attorney for Appellant  
277 Broadway  
New York, N.Y. 10007  
(212) 962-3342

MARTIN B. ROSNER,  
Of Counsel, on Brief

Dick Bailey Printers, Inc., Tel.: (212) 447-5358



PAGINATION AS IN ORIGINAL COPY



TABLE OF CONTENTS OF APPENDIX

	Page
Docket entries.....	1A-2A
Indictment.....	3A
Excerpts from Government prosecutor's grossly objectionable summation discussed under <u>POINT IV(A) and (B)</u> , pp.32-40 of Appellant's Brief .....	4A-11A
Court's charge to jury.....	12A-32A
Judgment of conviction on plea of guilty to Count One for <u>stealing stereos</u> under <u>prior</u> indictment	33A
Judgment of conviction for <u>possession</u> and Commitment in <u>present</u> case .....	34A
Notice of Appeal and Order Granting leave to appeal in forma pauperis signed by Judge Wyatt on Dec.12/75	35A

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT JUDGE WYATT 75 CRIM. 739

[illegible]

Theft from interstate shipment.

DATE	PROCEEDINGS
7-24-75	Filed indictment.
8-4-75	Deft.(atty. present) Pleads not guilty. Motions returnable in 10 day Bail fixed at \$10,000. P.R.B. continued. Deft. ordered photographed fingerprinted. Case assigned to Judge Wyatt for all purposes. Stewart, J.
8-4-75	Filed deft's. unsecured P.R.B. in the sum of \$10,000 - acknowledged by the Clerk.
8-5-75	Filed notice of appearance of I.S. Cooper as attorney for deft.



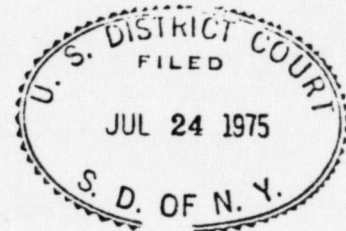
75 Cr. 739

75 Cr. 739

## Page #2

DATE	PROCEEDINGS
11-03-75	Trial begun with a jury.
11-04-75	Trial continued & concluded. Verdict Guilty. Pre-sentence investigation ordered. Sentence 12-12-75. Bail increased to \$10,000 P.R.B. secured by \$1,000 cash or surety bond. Deft. has until 11-11-75 to post bail.....Wyatt, J.
11-06-75	Filed Govt's. request to charge.
11-06-75	Filed Govt's. memorandum in support of admissibility of certain evidence.
11-10-75	Filed transcript of record of proceedings dated November 3, 4, 1975...
11-12-75	Filed deft's. appearance bond in the sum of \$10,000 P.R.B. secured by \$1,000 cash Receipt #60948 co-signed by Paula Schatten - acknowledged by the Clerk.
12-12-75	Filed Financial Affidavit.
12-12-75	Deft. (Atty present) sentenced to three (3) years Deft. to surrender to the U.S. Marshal Dec. 15-1975 At 10:30 A.M. Rm 506. Bail Contd. Wyatt, J.
12-12-75	Filed Judgment and Commitment Order. The deft is committed to the custody of the Atty Gen for a period of three years (3). Deft. to surrender to the U.S. Marshal on Dec 15- 1975 in Room 506 at 10:30 A.M. Wyatt, J.
12-19-75	Filed Transcript of Record of Proceedings, dtd. 10-31-75.
12-19-75	Filed Transcript of Record of Proceedings, dtd. 12-12-75.
12-12-75	Filed deft's. notice of appeal from the judgment of conviction entered on 12-12-75 and Memo Endorsed. Deft's. application to proceed on appeal in forma pauperis is granted.....Wyatt, J. (Mailed copies to Aron Schatten, c/o Alfred I. Rasner, 277 B'way., N.Y.C. 10007 and U.S. Attorney's Office).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

-v-

ARON SCHATTEN,

Defendant.

x

:

:

:

:

x

INDICTMENT

75 Cr.

**75 CRIM. 739**

The Grand Jury charges:

From on or about the 17th day of July 1974 up to and including the 22nd day of July 1974, in the Southern District of New York and elsewhere, ARON SCHATTEN, the defendant, unlawfully, wilfully and knowingly did have in his possession certain goods and chattels of a value greater than \$100.00, to wit, thirty-five cartons of Sarto brand Italian men's knit shirts, knowing the same to have been embezzled and stolen, said goods and chattels having been embezzled, stolen and unlawfully taken and carried away from a motortruck and vehicle owned by Associated Transport Company, Inc., 11 West Street, Brooklyn, New York, while said goods and chattels were moving as, were a part of, and constituted an interstate shipment of freight, express and property from New York, New York to Cleveland, Ohio.

(Title 18, United States Code, Section 659.)

*X. M. Givens*

*Paul J. Curran*  
DAVID T. CURRAN



1 eob-2

2 delivery men. So that it had to have been about July  
3 21 or July 22 that Mr. Schatten received the shirts and  
4 gave the delivery men this check, Government Exhibit 8.

5 By July 24, Mr. Schatten must have had the check,  
6 just a day or two later, because it was on July 25th that  
7 Mr. Moucatel had the check.

8 We know that because on July 25th Mr. Moucatel  
9 testified he gave his friend Mr. Schatten this check for a  
10 thousand dollars, Government Exhibit 23, in part payment for  
11 this check, Government Exhibit 8.

12 So that between July 21, 22, 23 and 24,  
13 Mr. Schatten - Artie, rather, had received this check  
14 and given it to Mr. Schatten who then brought it back down  
15 to New York. Bear in mind that Artie was up in South  
16 Fallsburg all the time running around with women, going to  
17 night clubs and going to the track. When did Artie have  
18 time to get this check from his delivery men, if that is  
19 what you would believe, and then in turn give the check to  
20 Mr. Schatten.

21 The Government submits that there just wasn't  
22 time for all this to happen and it must have been Mr.  
23 Schatten who had those delivery men working for him, and that  
24 it was Mr. Schatten who got the check from the delivery men.  
25 There was no Artie.

1  
2 If there had been don't you think Mr.Schatten  
3 would have had him here as a witness and have him testify  
4 as Mr. Moucatel explained how he got the check?

5 Then Mr.Schatten could have explained how he  
6 got the check from his friend Artie.

7 Why didn't Mr. Schatten call his wife here  
8 to testify about the sale of the ring? She would have been  
9 able to tell you about the ring if he had called his own  
10 wife, but she wasn't here.

11 Mr. Moucatel and Mr.Schatten both testified as  
12 to what good friends they were. They were always loaning  
13 each other substantial amounts of money with no questions  
14 asked, a thousand dollars, two thousand dollars, even more  
15 than that.

16 Nonetheless, Mr.Schatten didn't tell his friend  
17 Mr. Moucatel about his financial problems; that he had  
18 to sell his wife's engagement ring, that he got this check  
19 from some guy named Artie. He just told Mr. Moucatel that  
20 the check was good.' Twice he told him that the check was  
21 good.

22 Is that the way you deal with your friend who  
23 is cashing a \$2400 check for you? You wouldn't tell  
24 him any of these other details or does that sound like  
25 a story that had just been made up at the last minute.



1 eob-4

2 to tell you ladies and gentlemen of the jury.

3 Look also at this other aspect of this check.  
4 Here is Mr.Schatten who testified that he had been con-  
5 victed in 1972 for selling radios that were part of a stolen  
6 freight. He is telling you that the reason he got in-  
7 volved in that problem and was convicted and went to jail  
8 for 11 months was because some guy gave him some papers and  
9 said go on down to the pier and pick up this freight for  
10 him, and as a result of that, because he was duped by  
11 this man, that is what Mr. Schatten would have you believe,  
12 he ended up being convicted in 1972 and serving 11 months  
13 in prison, getting out some time, I guess, in 1973, which  
14 would mean having been out of prison for only approximately  
15 a year's time, now he is taking another piece of paper from  
16 a man he has met three or four times, after he just spent  
17 11 months in prison, for being duped by another stranger.

18 Does this sound credible to you? Is that the  
19 story that you can believe?

20 Also, look at the other aspect of this prior  
21 conviction that Mr.Schatten testified to. Didn't he tell  
22 you that there there were radios on that truck, electronic  
23 equipment, stereos and didn't we have the testimony from  
24 Mr. Katz that his electronic equipment was on the truck that  
25 was stolen from Mr. Greenspun on July 17.

1 eob-5

2 Now, isn't it likely that someone who had a  
3 source who would fence or buy stolen radios in 1970 might  
4 be able to get to that same source or might think he  
5 could in 1974? Doesn't it sound like some kind of common  
6 scheme to you?

7 Wouldn't it be possible for someone just to watch  
8 a delivery man like Mr. Greenspun going into places that sell  
9 electronic equipment, seeing him coming out with boxes  
10 marked radios, stereos, whatever, and follow him and steal  
11 his truck?

12 Then unload the goods, as we have here.

13 Doesn't this sound a lot like that prior con-  
14 viction from 1972?

15 Then there is the aspect of where the truck was  
16 located. Just four or five blocks from the Arpen Trucking  
17 Company Terminal. Now, Mr. Cooper elicited the testimony  
18 from Agent Kosednar about it being unusual for someone  
19 to drop off a stolen truck so near to his own office or  
20 place of business or his home, but also doesn't it seem  
21 like someone who didn't expect to get caught might do some-  
22 thing like that in order to have a way to get back home?

23 Otherwise he would need to have someone follow  
24 him, so that if he left the truck at some distance, he would  
25 need a way to get back. If he leaves it only a few blocks



1 eob-6

2 away, thinking there are lots of other businesses and homes  
3 and other locations in that area, who is going to trace  
4 it back to him in that four or five block area in Brooklyn.  
5 There could be thousands of other businesses and garages.

6 Isn't it a coincidence that this truck turns  
7 up four or five blocks from the Arpent Trucking Terminal?

8 Then another curious aspect of Mr. Schatten's  
9 story is the way he carried this ring in his pocket. He  
10 tells you that he really had a financial problem in 1974  
11 and he told you also that he lived in a dangerous community,  
12 a community where there is a lot of crime, worked in a  
13 community where there is a lot of crime and couldn't get  
14 any insurance so he didn't have any insurance on this ring,  
15 and yet he carried this ring around with him in his pocket.

16 What could be more dangerous than that? Does it  
17 sound likely that a man would just carry a ring like that in  
18 his pocket. He had bank accounts, he could have gotten a  
19 safety deposit box, he could have tried to hide the ring.  
20 Maybe his company had a safe. He tells you he just carried  
21 this ring around in his pocket.

22 He also testified that he had gone some years  
23 earlier and gotten an appraisal on the ring. Now, isn't it  
24 strange that a man who is hard up for money doesn't go  
25 back again to try to find out what the ring is worth before

1 bjmjw 7

2 whether Mr. Schatten is worthy of your belief.

3 The government has outlined the other factors.  
4 Not only the evidence that exists against Mr. Schatten  
5 but his explanation about selling the ring and his  
6 explanation about Artie, his explanation about why he  
7 gave the check to Mr. Moucatel but never told his good  
8 friend Mr. Moucatel all the information that he was  
9 telling you ladies and gentlemen yesterday.

10 The government contends that this prior con-  
11 viction is one other factor that you may consider in  
12 evaluating Mr. Schatten's credibility. Also a factor  
13 that you may consider in what his intent was here and  
14 whether he had these goods he would have known they were  
15 stolen or a common scheme to sell radios once again or  
16 to steal and sell radios once again as Mr. Schatten  
17 had been convicted of selling radios a fairly short time  
18 earlier.

19 This is one factor that you may consider.

20 Mr. Cooper also tried to suggest that Mr.  
21 Goldberger may have been the <sup>(thief)</sup> theft here. Maybe he was  
22 closer to the actual theft. It is up to you ladies.  
23 and gentlemen of course to evaluate the credibility of  
24 the witnesses. You have to think back about Mr. Goldberger  
25 and recall whether he didn't give you the kinds of details



1 bjmjw 9

2 really was interested in was the radios, that they would  
3 have been the easiest thing for someone to steal and fence  
4 and finding several thousand dollars worth of shirts on  
5 the truck, that the thief would have figured this would  
6 be an easy way to pick up a --

7 MR. COOPER: If your Honor please, nothing  
8 in the indictment about the theft of radios in 1974 and  
9 I must object to it.

10 THE COURT: I will overrule the objection.  
11 I will permit that. Go ahead.

12 MR. IASON: I think you may infer that the  
13 thief, whoever it was, was trying to pick up the \$2,443  
14 extra dollars and the thief got sloppy in other places  
15 like leaving the truck too close to his own terminal.

16 Obviously the thief was careful is using the  
17 rented truck and using deliverymen, not his own delivery-  
18 men. But he made some mistakes.

19 The government does not suggest, as Mr. Cooper  
20 tried to imply, that Mr. Schatten told the deliveryman,  
21 "If there is any trouble you give my card to Mr. Goldberger."  
22 Of course not. The deliveryman may have been in Mr.  
23 Schatten's place of business and picked it up inadvertently  
24 and they may have taken the card so they would have a way  
25 of getting back to Mr. Schatten so they could give him the

1       bjmju 10

2       check from the shirts.

3               It never would have occurred to Mr. Schatten  
4       that the deliverymen would have given the card to Mr.  
5       Goldberger but the deliverymen, you can reasonably infer  
6       that they were not in on the deal and they didn't know  
7       the shirts were stolen and would not have known not to  
8       give this card to Mr. Goldberger.

9               A critical question for your determination  
10       here is whether you can credit the story that Mr. Schatten  
11       told you about the ring and selling the ring to Artie and  
12       carrying the ring in his pocket when it was uninsured and  
13       not telling his wife about it and telling the man three  
14       times before.

15              Suppose the wife got upset when she found out  
16       he sold the ring and wanted to get it back because of  
17       sentimental value? It was the engagement ring  
18       and Mr. Schatten didn't know Artie's last name or where  
19       he lived. He sold the ring to the man named Artie and  
20       the man named Artie trusted Mr. Schatten with a check  
21       for this amount of money without getting a ring.

22              And this same Mr. Schatten selling the ring  
23       to the man named Artie and taking a check he knew nothing  
24       about. Mr. Schatten is sufficiently astute and capable  
25       and he has been running his own business for years and yet



T3 EOjw 1

CHARGE OF THE COURT

Judge Wyatt

(In open court - jury present)

THE CLERK: The Court is about to charge the jury. Everyone will please remain seated until the completion of the Court's charge.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury:

This case is now about to be submitted to you for your decision on the issues of fact here involved and, of course, your decision on those issues determines whether your verdict is guilty or not guilty.

In making your decisions you act as ministers of justice and you discharge an obligation which it is not too much to call sacred.

In making your decisions you are to adopt an attitude of complete fairness and complete impartiality. You are to appraise the evidence solely and calmly and objectively and without any bias or prejudice in favor of the government or any bias for or against the defendant in the case.

You are the sole and exclusive judges of the

1      oiw

2      facts. You determine the weight of the evidence and  
3      the credibility of all witnesses.

4                      You decide all conflicts in the evidence and  
5      any differences. You draw whatever reasonable inferences  
6      you find from the facts as you may find those facts  
7      to be.

8                      My function at this point is to explain to  
9      you the applicable law. Your duty is to accept and  
10     follow my instructions and apply them to the facts as  
11     you may find the facts to be.

12                     In determining what the facts are, you must  
13     rely on your own recollection of the testimony and other  
14     evidence. What I say during these instructions and what  
15     counsel have said to you this morning in argument and  
16     what counsel may have said yesterday is not evidence and  
17     is not to be taken in place of your own recollection,  
18     which is what controls.

19                     The fact that rulings have been made by me  
20     during the trial is not to be taken as any indication of  
21     any view by me as to what your decision should be or any  
22     view by me as to the guilt or innocence of this defendant.

23                     You are not to assume that I have any opinion  
24     whatever as to the guilt or innocence of the defendant  
25     or as to the truth or falsity of the charge.



1           The fact that I may have sustained objections  
2           or overruled objections and made other rulings during  
3           the course of the trial is also not to be taken by you  
4           as any indication that the defendant is believed by the  
5           Court to be guilty or not guilty. The rulings as to  
6           objections and as to other matters are based on questions  
7           of law with which, as I told you before, you, as jurors,  
8           have no concern.  
9

10           If during the trial a question was asked and  
11           an objection interposed and the objection was sustained,  
12           you should disregard the question and any alleged facts  
13           contained in the question. You will remember, of course,  
14           that the question is never evidence. It is only the  
15           answer which is evidence.

16           I would also remind the jury that what is  
17           said between Court and counsel the jury should disregard  
18           and I repeat, as I think I said yesterday, from time to  
19           time I occasionally asked questions of a witness. It  
20           is always solely in an attempt to make some testimony,  
21           some point clearer to the jury and is certainly not to  
22           be taken as any indication of any opinion by me as to the  
23           guilt or innocence of the defendant or as to the credibility  
24           of any witness.

25           Now, the fact that the government is a party

1       ojw

2       and that the prosecution is brought in the name of the  
3       United States does not entitle the government or its  
4       witnesses to any greater consideration than that accorded  
5       to the defendant.

6               At the same time, the government and its  
7       witnesses are entitled to no less consideration. All  
8       parties, government and individuals alike, stand as  
9       equals here before the bar of Justice.

10              The indictment, as I emphasized yesterday,  
11       is merely an accusation. It is a charge. It is not  
12       evidence. It is not proof of the guilt of the defendant.

13              You should give no weight to the fact that an  
14       indictment has been returned. The defendant has pleaded  
15       not guilty. The government has the burden of proving  
16       the charge against the defendant beyond a reasonable  
17       doubt. It is a burden that never shifts and it remains  
18       upon the government throughout the entire trial.

19              A defendant does not have to prove his innocence.  
20       He is presumed to be innocent of the accusations contained  
21       in the indictment. The presumption of innocence disappears  
22       only if and when you are satisfied that the government  
23       has sustained the burden of proving guilt beyond a reason-  
24       able doubt.

25              Now, this expression "reasonable doubt".



We say that it is a doubt founded on reason and arising out of the evidence or the lack of evidence in the case. It is a doubt which a reasonable person has after carefully weighing all the evidence.

It is a doubt which is substantial and not merely shadowy. A reasonable doubt is one which appeals to your judgment, your common sense, your reason, your experience.

It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

A reasonable doubt is not a vague, speculative, imaginary doubt, but such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. If that were the rule, few men or women, however guilty, would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any fact which is controverted but is not capable of proof beyond a mathematical certainty.

In consequence, the law in a criminal case is that it is sufficient that the guilt of the defendant be established beyond a reasonable doubt and not beyond all possible doubt.

1       ojw

2               Now, members of the jury, we turn to the indict-  
3       ment and I read it to you again so that you will have  
4       in mind the charge.

5               "The grand jury charges:

6               "From on or about the 17th day of July 1974  
7       up to and including the 22nd day of July 1974, in the  
8       Southern District of New York and elsewhere, Aron  
9       Schatten, the defendant, unlawfully, wilfully and  
10      knowingly did have in his possession certain goods and  
11      chattels of a value greater than \$100, to wit, 35 cartons  
12      of Sarto brand Italian men's knit shirts, knowing the  
13      same to have been embezzled and stolen. Said goods and  
14      chattels having been embezzled, stolen and unlawfully  
15      taken and carried away from a motor truck and vehicle  
16      owned by Associated Transport Company, Inc., 11 West  
17      Street, Brooklyn, New York while said goods and chattels  
18      were moving as, were a part of and constituted an  
19      interstate shipment of freight, express and property from  
20      New York, New York to Cleveland, Ohio."

21              Now, the defendant, as we know, has pleaded  
22      not guilty and that is the issue we are here trying.

23              Now, the law, which the defendant is charged  
24      with violating, provides in relevant part as follows:

25              "Whoever has in his possession goods which



1      o j w

2      have been stolen from a motor truck or other vehicle,  
3      while part of an interstate shipment of freight, knowing  
4      that the goods were stolen ..." is guilty of an offense.

5              The essential elements of the offense, which  
6      must be proved by the government beyond a reasonable  
7      doubt, are as follows:

8              First.    That there were goods which were  
9      part of an interstate shipment of freight. Property is  
10     in an interstate shipment if its movement originates  
11     in one state and passes or is intended to pass to or  
12     through another state.

13             Goods are considered to be part of an inter-  
14     state shipment as soon as they have left the possession  
15     of the shipper, in this case the seller, Michelangelo  
16     Knitwear Company, and have been delivered to a carrier  
17     who is to carry them for delivery to the ultimate consignee.

18             The goods continue as an interstate shipment  
19     from the time they have left the hands of the shipper  
20     until they are delivered to the consignee, the person  
21     to whom they are shipped, even though they may have come  
22     to rest for a period while they are in the hands of the  
23     carrier or while they move from the hands of one carrier  
24     to another.

25             The shipping documents, the bills of lading,

ojw

which the government put in evidence as its Exhibits 4 and 21, are prima facie evidence that the goods here involved were shipped from New York, New York by truck belonging to Associated Transport Company to a consignee or consignees in Cleveland, Ohio.

Prima facie evidence means evidence which is sufficient proof of a fact on its face unless disproved by some evidence to the contrary.

Now, the second element is that the goods were stolen from a motor truck or other vehicle while they were part of an interstate shipment of freight. It is not an element of the offense that the defendant himself stole goods or that he participated in the theft or that he knew who did the stealing, but it must be established that the goods were, in fact, stolen from a truck while they were part of an interstate shipment of freight.

The third essential element is that the defendant in the Southern District of New York had possession of the goods knowing that they had been stolen.

I should say that the Southern District of New York refers to the district over which this Court has jurisdiction and for your purposes it includes all of



1      bjw

2      the Island of Manhattan, New York County. That is a  
3      part of the Southern District of New York.

4               Now, it is not necessary that the defendant  
5      knew that the goods were stolen from a truck while they  
6      were part of an interstate shipment of freight. It  
7      must be established simply that the defendant knew that  
8      the goods were stolen.

9               Now, I have just said that it is an essential  
10     element of the offense that the defendant had possession  
11     of the goods. Now, the law recognizes two kinds of  
12     possession, actual possession and constructive possession.

13              A person who knowingly has direct physical  
14     control over a thing at a given time is then in actual  
15     possession of the thing.

16              A person who, although not in actual possession,  
17     knowingly has both the power and the intention at a given  
18     time to exercise control over a thing, either directly  
19     or through another person or persons, is then in constructive  
20     possession of the thing.

21              You may find that the defendant had possession  
22     of the goods if you find beyond a reasonable doubt that  
23     the defendant had actual or constructive possession either  
24     alone or jointly with others.

25              It is not necessary that the defendant be shown

1      ojw

2      to have had possession of the goods from the time that  
3      they were stolen, if you find that they were indeed  
4      stolen, nor that the defendant have had possession of  
5      the goods for any particular length of time.

6                It is sufficient that the defendant had  
7      possession of the goods on or about the dates stated in  
8      the indictment, namely, from July 17, 1974 to July 22,  
9      1974.

10               I have also told you that if you find that the  
11     defendant did have possession of the goods and that the  
12     goods had been stolen, as charged, another essential  
13     element of the offense is that the defendant knew that  
14     the goods had been stolen.

15               In this connection I may tell you that possession  
16     of goods recently stolen, if not satisfactorily explained,  
17     is a circumstance from which the jury may reasonably  
18     draw the inference and find that the person in possession  
19     knew that the goods had been stolen.

20               Now, members of the jury, if you find that  
21     the government has proved beyond a reasonable doubt  
22     the three essential elements, as I have explained them,  
23     and that the defendant is guilty, then the jury must  
24     find whether the value of the goods stolen of which  
25     defendant had possession was more than \$100.



1                   The reason for this is that the law provides  
2  
3                   a greater maximum penalty if the value of the stolen  
4                   property exceeds \$100.

5                   Value means face, par value or market value  
6                   or cost price, either wholesale or retail, whichever  
7                   value is greater. The value of the property stolen is  
8                   a question of fact to be determined by the jury.

9                   I will give you a memorandum when my instructions  
10                  are concluded as a guide in formulating your verdict  
11                  and on that memorandum I will indicate a special question  
12                  as to the value of the property, if you find the  
13                  defendant guilty.

14                  To answer the question that the value of the  
15                  stolen property was more than \$100, the government must  
16                  establish this beyond a reasonable doubt.

17                  Now, members of the jury, I emphasize that  
18                  the jury determines the credibility of all witnesses.  
19                  How do you determine whether witnesses are telling the  
20                  truth?

21                  You use your ordinary common sense which you  
22                  by no means leave behind you when you come to this court-  
23                  room or when you retire to the jury room. As practical  
24                  men and women you draw on your everyday experience in  
25                  meeting and dealing with people in your ordinary business

1       ojw

2       and social life.

3               In passing upon the credibility of witnesses,  
4       you may take into account inconsistencies, variances,  
5       conflict with the testimony of other witnesses and the  
6       like.

7               The degree of credit to be given a witness  
8       should be determined by his demeanor here, as you observed  
9       on the witness stand, relationship to the controversy  
10      and to the parties, bias or impartiality, reasonableness  
11      of the statements made, strength or weakness of his  
12      recollection, all viewed in the light of other evidence  
13      and the attendant circumstances of the case.

14              You observed the witnesses. How did each  
15      witness impress you? You take each one and on the basis  
16      of your experience you determine whether or not you  
17      believe them and to what extent, if any, you do believe  
18      them.

19              Now, the law permits, but does not require  
20      a defendant to testify in his own behalf. The defendant  
21      here, Mr. Schatten, has taken the witness stand and has  
22      testified.

23              Obviously, a defendant has a deep personal  
24      interest in the result of his prosecution. In fact, it  
25



ojw

251

seems clear that he has the greatest interest of all.

Interest creates a motive for false testimony. The greater the interest the stronger the motive and the interest of a defendant in the result of his trial is of a character possessed by no other witness.

In appraising the credibility of the defendant, you may take the fact of interest into consideration. However, it by no means follows that because a person has a vital interest in the result that he is not capable of giving a straightforward and truthful account of events.

It is for you to decide to what extent, if at all, his interest has affected or colored his testimony.

Evidence that the defendant has a previous criminal conviction may also be considered by the jury in weighing his credibility. That a person has such a conviction does not mean that he cannot tell the truth. It is simply a factor for the jury to consider in determining credibility.

You may consider in determining whether the defendant acted with guilty knowledge or intent the fact, if you find it to be a fact, that the defendant engaged in another transaction similar to that charged in this indictment.

1                    Now, I should say a few words on the subject  
2  
3 of direct and circumstantial evidence.

4                    Direct evidence is where a witness testifies  
5 to what he or she saw, heard, observed; what he or she  
6 knows of his or her own knowledge; something which comes  
7 by virtue of the senses.

8                    Circumstantial evidence is evidence of facts  
9 and circumstances from which one may infer connected  
10 facts which reasonably follow in the common experience  
11 of mankind.

12                   Stated perhaps a little differently:    Circum-  
13 stantial evidence is evidence which tends to prove a  
14 disputed fact by proof of other facts which have a logical  
15 tendency to lead the mind to a conclusion that those  
16 facts exist, which are sought to be established.

17                   Circumstantial evidence, if believed, is of  
18 no less value than direct evidence for in either case  
19 you must be satisfied beyond a reasonable doubt of the  
20 guilt of the defendant.

21                   Now, we often use a simple example in trying  
22 to illustrate what is meant by circumstantial evidence.

23                   You all remember from childhood in the old  
24 story of Robinson Crusoe how one day he saw footprints  
25 in the sand on the beach. He did not see a man walking



ojw

253

on the beach, but he immediately drew an inference from the fact of the footprints that a man had in fact been walking on the beach. That is about all there is to circumstantial evidence.

You infer on the basis of reasonable experience from an established fact the existence of some further fact.

Now, members of the jury, your verdict must be unanimous.

The jury is not to consider in any way or to speculate about the punishment which the defendant may receive if he is found guilty. Under your oath as jurors, you cannot allow a consideration of the punishment which may be imposed upon the defendant, if he is convicted, to influence your verdict in any way or to enter into your deliberations.

The function of a jury is to determine whether a defendant is guilty or not guilty on the basis of the evidence and my instructions.

It is the Judge alone, the Court, who has the duty of determining the sentence if there is a conviction.

The charge here, ladies and gentlemen, is a most serious one. The just determination of this case is important to the public. It is equally important to

1      ojw

2      this defendant.

3                   Under your oath as jurors you must decide the  
4      case without fear or favor and solely, as I have stated  
5      a number of times, in accordance with the evidence and  
6      the law.

7                   If the government has failed to carry its  
8      burden as to the defendant, your sworn duty is to bring  
9      in a verdict of not guilty.

10                  If the government has carried its burden,  
11      you must not flinch from your sworn duty, but you must  
12      bring in a verdict of guilty.

13                  The guilt or innocence of the defendant is  
14      for you and you alone to determine. The government to  
15      prevail must prove the essential elements as I explained  
16      them by the required degree of proof.

17                  If it succeeds, as I just said, your verdict  
18      must be guilty.

19                  If it fails, your verdict must be not guilty.

20                  Now, members of the jury, your verdict will  
21      be returned orally in open court. The foreman will answer  
22      to the clerk guilty or not guilty, as the case may be.

23                  I am giving the foreman a form because of the  
24      special question which I will refer to in a moment, a form  
25      to be used simply as a guide for returning your verdict.



Because, as I say, there is a special question as to the value of the property if you find the defendant guilty.

This memorandum simply recites our procedure. The clerk will ask: How do you find as to the defendant?

The foreman will answer in open court either guilty or not guilty.

Now, if the jury finds the defendant guilty, then the clerk will ask: Did the value of the stolen goods of which you found defendant to have had possession exceed \$100?

Your answer, through the foreman, will be either yes or no.

Now, if during your deliberations -- and before leaving the subject of the memorandum perhaps to be cautious I ought to say the memorandum is not to be signed. It is only a guide to assist in your deliberations.

The foreman will report the verdict orally in open court and this memorandum, of course, is, as I say, only a guide and it goes without saying that the form of the memorandum is not intended to nor should it affect in any way your deliberations.

If during those deliberations you wish to see any of the exhibits, the foreman should send out a note by the marshal. We will send in the requested exhibits

2 to you.

3 If you should wish any testimony read to you,  
4 likewise the foreman should send a request through the  
5 marshal and your request will be considered and, if  
6 granted, arrangements will be made.

7 Now, we have reached the time when we excuse  
8 our alternate jurors, Mr. Farber and Mr. Sabboroneck.

9 Now, before we excuse you with our thanks,  
10 this has been a short trial. As it turns out we could  
11 have done without alternate jurors, but even a short  
12 trial we never begin without alternate jurors and I want  
13 you to realize that although you will not participate  
14 in the deliberations of the jury, because the jury has  
15 kept hale and hearty, you have discharged a function just  
16 as important as if you were a member deliberating with  
17 the jury.

18 Because you understand that if any emergency  
19 arises, a juror's illness, emergencies in the family or  
20 any other reason which requires us to excuse a juror,  
21 if we do not have an alternate juror to substitute, the  
22 case has to stop and we have to start all over again and  
23 pick a new jury and take the evidence all over again.

24 So that is the reason we have alternate jurors  
25 as an assurance against such an event.



1       ojw

2               We thank you very much for your service.

3               Mr. Clerk, do you have instructions for the  
4       alternate jurors?

5               THE CLERK:    The alternate jurors are excused  
6       and their certificates of service will be mailed to them  
7       by the jury clerk.

8               THE COURT:    We will excuse you so you may  
9       get your things before the jury retires to deliberate.

10              Thank you very much.

11              (Alternate jurors left the courtroom)

12              THE COURT:    Members of the jury, please bear  
13       with us just a few minutes longer patiently and in silence  
14       in the jury box while I see counsel with the reporter at  
15       the side bar for any last minute questions of law.

16              (At the side bar)

17              THE COURT:    Mr. Iason.

18              MR. IASON:    The government has nothing, your  
19       Honor.

20              THE COURT:    Mr. Cooper.

21              MR. COOPER:   I have nothing on the charge,  
22       your Honor, other than on circumstantial evidence, the  
23       charge pertaining to that, I would request, perhaps, that  
24       circumstantial evidence must be proven by the government  
25       and complete a complete chain.

1       ojw

2               MR. IASON:   Your Honor, the government's  
3       position is that the charge on circumstantial evidence  
4       was complete and was the standard charge given in this  
5       courthouse. There is no need for anything further.

6               THE COURT:   I think, Mr. Cooper, I have given  
7       the charge that I have been giving for twelve years and,  
8       frankly, if I tinkered with it, I would not have confidence  
9       that I would do it correctly.

10              MR. COOPER:   I make the request for the  
11       record.

12              THE COURT:   Of course, I understand.

13              MR. COOPER:   At this time retroactively,  
14       of course, I make the motion that the case against the  
15       defendant be dismissed and that the charges in the  
16       indictment be dismissed on the grounds that after the entire  
17       case that the defendant cannot be proven guilty beyond  
18       a reasonable doubt as a matter of law.

19              THE COURT:   I am obliged to and do deny the  
20       motion.

21              MR. COOPER:   Very well.

22              (In open court)

23              THE COURT:   Mr. Clerk, will you swear the  
24       marshal.

25              (A marshal was duly sworn)



ojw

THE COURT: Mr. Foreman, ladies and gentlemen  
of the jury:

The case is submitted now for your decision.  
If you will follow the marshal to the jury room, you  
may begin your deliberations.

(The jury retired to deliberate at  
11:50 a.m.)

THE COURT: Mr. Clerk, will you give counsel  
a copy of the memorandum on the verdict.

Will you mark a copy as a Court's exhibit.

(Court's Exhibit 3 marked)

THE COURT: All right, we will stand by and  
await the pleasure of the jury.

(Recess)

## United States District Court

EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ MAY 5 1972 ★

No. 77-CR-584

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

AARON SCHATTEN,

Defendant.

On this 5th day of May, 1972, came the attorney for the government and the defendant appeared in person and with counsel,

It IS ADJUDGED that the defendant upon his plea of guilty, and the court being satisfied that there is a factual basis for the plea, has been convicted of the offense of violating Sections 659 and 2 of Title 18, U.S. Code, in that the defendant with others, on or about October 22 and 23, 1970, embezzled, stole and fraudulently obtained, with intent to convert to their own use, AM-FM stereos, having a value in excess of \$100, which goods were moving as part of an interstate shipment of freight from Yokohama, Japan to New York,

as charged in count 1, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on count 1 subject to Section 4208(a)(2) of Title 18, U.S. Code. On motion of Assistant U.S. Attorney Bashian, the remaining counts are dismissed. Execution of sentence is stayed until May 19, 1972.

XXXXXX XXXX XXXX XXXX XXXX

It IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to<sup>6</sup>

*Frank R. Bartels*  
United States District Judge.

Clerk

<sup>1</sup>Insert "by [name of counsel, counsel] or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." <sup>2</sup>Insert: (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup>Insert "in count(s) number \_\_\_\_\_" if required. <sup>4</sup>Enter (1) sentence or sentences, specifying counts if any, (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence, (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup>Enter any order with respect to suspension and probation. <sup>6</sup>For use of Court to recommend a particular institution.



**PLEA**

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

(34A)

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged  
☒ GUILTY.

**FINDING & JUDGMENT**

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, and knowingly did have in his possession certain goods of a value greater than \$100.00 knowing the same to have been embezzled and stolen, from a motortruck, while said goods were moving as, were a part of, and constituted an interstate shipment.

(Title 18, U. S. Code, Section 659.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE (3) years.

**SENTENCE OR PROBATION ORDER**

Defendant to surrender to the U.S. Marshal on December 15, 1975 in Room 506 at 10:30 a.m.

**SPECIAL CONDITIONS OF PROBATION**

**ADDITIONAL CONDITIONS OF PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT RECOMMENDATION**

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

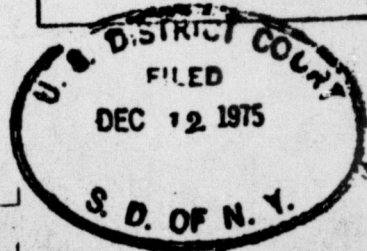
**SIGNED BY**

☒ U.S. District Judge

☐ U.S. Magistrate

Inzer B. Wyatt, D. J.

Date Dec. 12, 1975







UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DEC 12 1975  
S. D. OF N. Y.

-----X  
U. S. A.  
V.  
ARON SCHATTEN  
-----X

(35A)

Action Number

7569 837  
I D U.

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Notice is hereby given that Aron Schatten  
above named, hereby appeals to the United States Court of  
Appeals for the Second Circuit from the \* Judgment  
of December 12, 1975

TO  
US ATTY  
DEPT. OF ALBANY ROSENBERG

Signed Alfred I. Rosner  
Attorney for  
277 Broadway, N.Y.  
10007  
Address

Notice to:

DEFENDANT'S APPLICATION TO PROCEED ON APPEAL IN FORMA PAUPERIS  
IS GRANTED..  
SO ORDERED.

\* Insert whether order or final judgment:  
or part thereof appealed from.

NEW YORK, N. Y.

Myer Breyer  
U. S. D. J.